the constitutionality of the statute, on the ground that there were some corporations whose business would not bring them within the reason of the classification. The appellate court of the State, in construing the act in a previous case, had apparently conceded its unconstitutionality so far as it attempted to impose the enlarged liability on corporations whose business was not peculiarly hazardous, but had held, nevertheless, that the act was capable of severance; and whether unconstitutional or not, as to corporations of the latter character, it might still be sustained as to railroad companies. This construction the Supreme Court of the United States adopts so far as the act is held to be severable. Then reading the act as if it applied only to railroad companies, the court holds it not unconstitutional, for the reason before stated.

TROVER AND CONVERSION—CARRIERS—DETENTION OF GOODS ON REASONABLE GROUNDS.—Plaintiff delivered to the defendant, a common carrier, property to be transported from one station to another on its line. While in the carrier's possession, the goods were attached as the property of a third person. The defendant refused to deliver them to the plaintiff, pending the attachment. After the dismissal of the attachment, defendant's agent demanded demurrage for the detention of the car containing the goods, during the pendency of the attachment. Plaintiff declined to pay demurrage, but tendered the freight and demanded the goods. Defendant's agent, himself without discretion as to remitting the charge for demurrage, refused delivery until he could communicate with his superior officer for instructions. Without awaiting these instructions, plaintiff at once brought his action for conversion. *Held*, That neither did the refusal to deliver while the attachment was pending, nor the refusal of the agent to deliver before receiving instructions, constitute conversion. *Hett* v. *Boston & M. R. Co.* (N. H.), 44 Atl. 910.

The principle applied by the court in the first instance was, that while the goods were under the attachment, howsoever wrongful the latter might be, they were constructively in the custody of the law, and not in the custody of the defendant; and hence delivery was impossible, and therefore non-delivery was excused. *Johnson* v. *Couillard*, 4 Allen (Mass.), 446; *Verrall* v. *Robinson*, 2 Cromp. M. & R. 495; *Stiles* v. *Davis*, 1 Black, 101.

In the second instance, refusal to deliver by the agent, acting on a reasonable doubt of the plaintiff's right to possession before payment of the demurrage charges, until a reasonable opportunity was given to ascertain the right, was not of itself sufficient evidence of conversion. "In such case," as the court says, "the law does not require one to act on the instant, and either comply with or deny the demand at his peril." *Robinson* v. *Burleigh*, 5 N. H. 225; *Sargent* v. *Gile*, 8 N. H. 325, 331; *Vaughan* v. *Watt*, 6 Mees. & W. 492; *Hollins* v. *Fowler*, L. R. 7 H. L. 757, 766.

MARSHALLING OF SECURITIES.—Meyers mortgaged to Whitman a steam hay-press and two mules, to secure a debt. Subsequently he executed a second mortgage on the hay-press alone to Hunt. Both mortgages were duly recorded. At a later date, the mortgagor sold the two mules to Webb for $170 cash, the latter buying without actual notice of either of the previous mortgages. The purchaser of the mules, upon discovering the incumbrance upon them, purchased the debt

secured by the first mortgage. Upon a bill filed by the junior mortgagee, Hunt, to marshall the securities, by compelling Webb, the then holder of the first mortgage and purchaser of the mules, to credit upon his debt the value of the mules (which he had in the meantime sold) upon his debt, so as to reduce the amount of the first mortgage on the hay-press for the benefit of the junior lienor, it was *Held*, That marshalling would be refused. *Webb* v. *Hunt* (Ind. Ter.), 53 S. W. 437.

The court here follows the English doctrine, that "the equity to marshall assets is not one which fastens itself upon the situation at the time the successive securities are taken, but, on the contrary, is to be determined at the time the marshalling is invoked. The equity can only become a fixed right by taking proper steps to have it enforced, and until this is done it is subject to displacement and defeat by subsequently acquired liens upon the funds." See 2 L. C. E. 252.

This view is sustained by but few American authorities. With us, the prevailing, and, as is believed, the juster, view, is, that the equity of marshalling attaches at the time the successive securities are executed, and subsequent lienors or purchasers, with notice of the situation, take in subordination to the equity. Thus, if A has a lien on two funds and B a lien on one of these only, B's equity of marshalling exists from the moment he acquires his lien. This equity cannot be displaced by the acquisition of subsequent liens against the singly charged fund, with notice of the situation. If, therefore, in the case last stated, C subsequently purchases the singly charged fund, with actual or constructive notice of B's equity of marshalling (and registry of the two prior liens is notice), his equity is inferior to B's. In the principal case, the junior mortgagee of the hay-press, Hunt, was entitled to the equity of marshalling as against the mules (the singly-charged fund) at the moment his mortgage was executed. Hence, when Webb purchased the mules, with both mortgages duly recorded, he was chargeable with notice that the hay-press was included along with the mules in the first mortgage, and with notice that if the hay-press had been mortgaged subsequently, the equity of marshalling existed as against the mules in favor of the second mortgagee. In other words, that there was a possible equity against the mules in another. It therefore became his duty to make enquiry as to a second mortgage on the hay-press; and such second mortgage being duly recorded, he was charged with notice of its existence.

It follows, under this view, that Meyers, the second mortgagee, was entitled to insist, if necessary for the payment of his lien, that the proceeds of the sale of the mules should be applied in discharge of the first lien, to the exoneration of the proceeds of the hay-press, to which alone his lien attached.

Some of our readers will doubtless recall the discussion of this subject in 2 Va. Law Register (p. 701), in which the REGISTER was obliged to confess that a previous editorial sanction of the English doctrine was not sustained by the American authorities. The authorities are collected in the editorial mentioned.

READING LAW BOOKS TO THE JURY.—In *Heller* v. *Pulitzer Publishing Co.* (Mo.), 54 S. W. 457, it is held that although by the Bill of Rights, in Missouri, the jury, "under the direction of the court," are made judges both of law and of fact in cases of libel, it is improper to read law books to the jury. The court holds that if either party desires the jury to be instructed as to the law of the case, application must be made to the court to give proper instructions.

Upon this point, the court said:

"The defendant argues that, if the jury are the judges of the law in a libel